

# **EXHIBIT 9**

# **FILED UNDER SEAL**

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

GOOGLE LLC,

Plaintiff,

vs.

No. 3:20-cv-06754

SONOS, INC.,

Defendant.

\_\_\_\_\_/

-- ATTORNEYS' EYES ONLY --

VIDEO-RECORDED DEPOSITION OF JAMES MALACKOWSKI

REMOTE ZOOM PROCEEDING

New Buffalo, Michigan

Friday, August 26, 2022

REPORTED BY:

LESLIE ROCKWOOD ROSAS, RPR, CSR 3462

Job No. CS5367688

1 Q. BY MS. COOPER: All right. You should have  
2 Exhibit 1198.

3 A. I do.

4 Q. You've seen this agreement before; correct?

5 A. I have. It's discussed within my report.

6 Q. This is a patent purchase agreement; correct?

7 A. It's so labeled as such, and I believe  
8 effectively that's what it is, yes.

9 Q. Do you agree that owning a patent provides more  
10 rights than merely having a license to a patent?

11 A. In general, I believe that to be true. It also  
12 provides more -- requires more obligation, such as  
13 maintenance and the like. But importantly, you need to  
14 look at the context of the purchase versus, in contrast,  
15 a hypothetical negotiation.

16 Most patents are not of significant value or  
17 certainly are not of value reflecting specific features  
18 that are promoted and sold in the market, and those are  
19 often acquired at lump sum prices but do not reflect  
20 important information for the hypothetical.

21 Q. Have you studied the value of the patents that  
22 Google acquired from Outland Research?

23 A. "Studied" is a vague term. I understand that  
24 there are 12 patents, 4 applications, as part of the  
25 agreement, that they relate to music media collaboration

1 reliable information of that case. I suspect, in having  
2 done this hundreds of times, that there are examples  
3 where the most reliable or the only data point was an  
4 acquisition.

5 Q. So the fact that a market data point may be a  
6 patent purchase agreement rather than a non-exclusive  
7 patent license, doesn't rule it out as being potentially  
8 relevant; correct?

9 A. It doesn't rule it out per se, unless there is  
10 obviously a better benchmark. In which case, you would  
11 eliminate it as a matter of fact.

12 Q. One of the reasons you think the Outland patent  
13 purchase agreement is not comparable is because Google  
14 and Outland are not competitors; correct?

15 A. And more specifically, as I describe in my  
16 report, that Outland is not a manufacturer in -- in the  
17 speaker market at all. That they are more in the realm  
18 of a non-practicing entity.

19 Q. You haven't done a technical analysis regarding  
20 the comparability of the patent that Google acquired from  
21 Outland Research; correct?

22 A. I'm not -- I have not advanced a technical  
23 comparison. I do describe what they generally relate to,  
24 and I shared that with you earlier.

25 Q. Do you dispute that the patents that Google

1 acquired in this case are technically comparable to the  
2 '885 patent?

3 A. I'm not offering that opinion. That's a  
4 question that's better for the technical experts.

5 Q. Do you know whether the technical experts  
6 dispute that?

7 A. I don't believe there is an opinion on that  
8 agreement from the Sonos technical experts because of the  
9 lack of relevance. But I defer to his report. I -- I  
10 could be misremembering that.

11 Q. Do you have a basis to disagree with Google's  
12 technical experts that the patents covered by this  
13 agreement are technically comparable to the '885?

14 A. I have not offered a disagreement. I don't  
15 think that's a relevant consideration, given the economic  
16 comparability. But I have not offered a technical  
17 rebuttal.

18 Q. In order to purchase the 12 patents and 4 US  
19 patent applications relating to music media collaboration  
20 and interface technology, Google made a lump sum payment  
21 of 2.25 million; correct?

22 A. Yes. In consideration of all elements of the  
23 agreement, that was the amount of the payment, as I  
24 describe on page 49 of my report.

25 Q. And that's a lump sum payment, not a running

1 STATE OF CALIFORNIA ) ss:

2 COUNTY OF MARIN )

3  
4 I, LESLIE ROCKWOOD ROSAS, RPR, CSR NO. 3462, do  
5 hereby certify:

6 That the foregoing deposition testimony was  
7 taken before me at the time and place therein set forth  
8 and at which time the witness was administered the oath;

9 That testimony of the witness and all objections  
10 made by counsel at the time of the examination were  
11 recorded stenographically by me, and were thereafter  
12 transcribed under my direction and supervision, and that  
13 the foregoing pages contain a full, true and accurate  
14 record of all proceedings and testimony to the best of my  
15 skill and ability.

16 I further certify that I am neither counsel for  
17 any party to said action, nor am I related to any party  
18 to said action, nor am I in any way interested in the  
19 outcome thereof.

20 IN WITNESS WHEREOF, I have subscribed my name  
21 this 30th day of August, 2022.

22  
23  
24 

25 LESLIE ROCKWOOD ROSAS, RPR, CSR NO. 3462